IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision :3-11-2006

State of Punjab Vs. Kuldip Singh and others

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. KS Boparai, Addl. AG, Punjab.

Virender Singh, J.

All the seven respondents-herein were booked in a case bearing FIR No. 46 dated 24-7-1997, under Sections 323, 324, 342, 506, 294,427, 148, 149,382 & 392 of the Indian Penal Code registered at police station Dehlon, District Ludhiana. They have earned acquittal vide impugned judgement of learned Judicial Magistrate Ist Class, Ludhiana dated 23.1.2006. Dissatisfied with the same, the State of Punjab has preferred the instant appeal.

An application under Section 378(3) of the Code of Criminal Procedure (Criminal Miscellaneous No. 387-MA of 2006) has also been moved for grant of leave to appeal.

We have heard Mr. Boparai, learned Additional Advocate General, Punjab and perused the impugned judgement minutely.

The present case was registered on the statement of one Avtar Singh (injured in this case), who stated that he was resident of village Lehra and was doing job in Punjab National Bank, Samrala Chowk, Ludhina. On 24.7.1997 he along with one Harchand Singh resident of

village Barundi was going in his Maruti car. When they reached ½ kilometer away from Saya Bus Stand, a Maruti car of white colour, the number of which was erased, came from the backside in a very high speed. The person who was sitting on the left seat of the said car signalled them to stop the car, consequently he stopped the car at some distance. Jarnail Singh-respondent No. 7 got down from the car. He was accompanied by other four persons, who were of the age of 25/26 years. Jarnail Singh gave a knife blow on the face of Avtar Singh while the other persons pulled him out of his car. It is then alleged that all the said persons had assaulted the complainant and caused dent to his car. It is further alleged that Jarnail Singh threatened him that in case he again asks for money, he would be killed. The keys of his car were also snatched. The reason for animosity projected was that the wife of Jarnail Singh was cousin of his (Avtar's) wife and Jarnail's wife had borrowed Rs. 80,000/- from the complainant. When the latter asked for return of the money, he was assaulted. On these allegations the present case was registered.

Supplementary statement of the complainant was recorded by the prosecution agency in which he named the other respondents. Consequently all of them were challaned.

The learned trial Court has acquitted the respondents primarily on the following two grounds:

(i) The prosecution has failed to explain as to how the complainant came to know about the names of all the respondents except Jarnail Singh.

(ii) The plea of alibi of Jarnail Singh has been believed.

In order to dislodge the case of the prosecution, the learned

trial Court has entered into a detailed discussion in paras 31 & 32 of the impugned judgement. We have gone through the same once again and feel the necessity of reproducing paras 31 & 32 of the impugned judgment, which are as follows:

> 31. Prosecution also failed to explain that how the complainant came to know about the name of other accused. The complainant has stated that he came to know about the names of accused from eye-witness Harchand Singh but eyewitness Harchand Singh stated that he never told the names of accused to the complainant. No identification parade is conducted. So identification of the accused had not duly established. The complainant in his statement deposed that he made plan with eyewitness Harchand Singh to go to Ludhiana a day before as some talk of matrimonial alliance is going on but eyewitness Harchand Singh is stating that he has made a plan with complainant to go to Ludhiana a week ago and he did not state about any matrimonial alliance. The complainant is stating that Harchand Singh has accompanied him as he has some work in his bank where he was employed but eyewitness Harchand Singh stated that he has no work at bank. PW-1 ASI Gurnam Singh stated on oath that he has recorded the statement of Harchand Singh in hospital but Harchand Singh has stated that his statement is not recorded in the hospital. Harchand Sigh PW-3 in his cross-examination himself admitted that police station-Dehlon and Civil Hospital, Dehlon has common wall and if one goes from Lehra to Civil Hospital, Dehlon, police station came first but he did not lodge report to the police about the

incident. He did not go to police station even after admitting the complainant in the hospital. Even for the arguments sake, it is presumed that he went to hospital, first as the complainant required the medical aid first then prosecution fails to establish that even after admitting the complainant in the hospital/eyewitness Harchand Singh did not go to police station to lodge report regarding the incident. The police has not collected blood stained earth from the place of occurrence and it is also a very important lacuna in the prosecution case.

32. This Court has carefully gone through the evidence led by accused Jarnaila Singh. To prove his plea of alibi, accused has clearly proved his presence at civil Hospital, Nabha at 8-00AM on the day of occurrence and then he has filled his moment register as he has to go to Patiala to give evidence in the court case and he reached at department of radiology, Patiala at 9/9-15AM for collecting the record and then went to court of Sh. R.S. Sachdeva, learned CJM, Patiala and where he has deposed and he has also produced attendance certificate to this effect. From the above stated evidence the accused Jarnail Singh has clearly proved that he was not present at the place of occurrence at the time of incident. Supplementary statement Exhibit DA made by complainant in which he has changed vital point of time of occurrence seems to be made up story as accused Jarnail Singh was found innocent by inquiry conducted by SHO as he was not present at the place of occurrence. Even for the argument sake, it has been presumed that incident occurred between 7/7-15AM even then accused Jarnail Singh did not

> reach at Civil Hospital Nabha at 8-00AM. The Nabha is more than 60 Kms away from village Lehra and complainant in his statement stated that accused after inflicting injuries on him goes towards Ludhiana and distance between Ludhiana and Nabha is more than 75 Kms".

Besides aforesaid flaw in the prosecution case, the learned trial Court has also observed that the supplementary statement of the complainant recorded during investigation could not be relied upon as a part of the First Information Report in the light of the judgment rendered by the Hon'ble Supreme Court in **Husna vs. State of Punjab, (1) RCR 657.**

Mr. Boparai submits that the case of the prosecution is unfolded by complainant Avtar Singh, who was also assaulted by all the respondents. His car was also damaged, which was taken into possession by the investigating agency. All these factors are self speaking of the involvement of the respondents, but the same have not been taken into consideration by the trial Court. He then contends that the ocular evidence in this case is corroborated by the medical evidence. The investigation was also verified by PW7-Paramraj Singh, SP (Crime), who found the occurrence to be true and therefore, the view taken by the learned trial Court is not sustainable.

It is settled legal position that an order of acquittal has to be disturbed only when there are compelling and substantial reasons for doing so. This principle was elucidated by the Apex Court in **Ramesh Babulal Doshi Vs. State of Gujarat, (1996) 9 SCC 225**, wherein it was observed as under:

> "While sitting in judgement over an acquittal the

> appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can then-and then only-reappraise the evidence to arrive at its own conclusions."

While dealing with an appeal against acquittal their Lordships of Hon'ble Apex Court in **State of Punjab Vs. Pohla Singh and another, 2004(1) RCR (Criminal) 5** have observed that there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. But generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing towards the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented.

After following the ratio of the aforesaid judgements and having minutely scrutinized the impugned judgment in the light of the evidence on record, we find no demonstrable perversity in the same resulting into miscarriage of justice. Therefore, we are hesitant in granting leave to appeal.

Resultantly Criminal Miscellaneous No. 387-MA of 2006 is dismissed.

[Virender Singh]
Judge

[A.N. Jindal]
Judge

November 3, 2006
`ask'